IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 7TH NOVEMBER 2006 / 16TH KARTHIKA 1928

Bail Appl..No. 5921 of 2006()

SC.120/2006 of ADDL.DISTRICT COURT (ADHOC), KOTTAYAM

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PETITIONERS/A1 & A2:

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1. P.P. PRIYAN, AGED 32,
   S/O. P.K. PRAKASAB, PEEDIEKKAL HOUSE,
   PALLURUTHY P.O.

2. SUNIL, AGED 28,
   S/O. GEORGE WILSON, EDATHIL HOUSE, EDAKOCHI.

BY ADV. SRI.C.P.UDAYABHANU

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE DEPUTY SUPERINTENDENT OF POLICE
KOTTAYAM (CRIME 110/05) REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY DIRECTOR GENERAL OF PROSECUTION SRI.P.G.THAMPI.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 07/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.M. JAMES, J.

Bail Application No. 5921 of 2006

Dated this the 7th November, 2006.

O R D E R

Petitioners are accused 3 and 4 in Crime No.110/2005 of Ettumannoor Police Station, for the offence punishable under Sections 120 B, 364, 302, 419 and 201 IPC, read with Section 34 IPC. Accused 1 and 2 along with three other accused had murdered a person at the behest of one former police officer, Dy.S.P. Shaji, and after dismembering, threw the limps in different localities. After detecting the crime, different parts of the body of the deceased person had been recovered, and the scientific investigation was conducted. It was accordingly concluded that the accused, five in number, had murdered and thrown the different parts of the body in different localities. Therefore, a final report was filed. Accused 1 and 2 have faced the trial and they had been convicted. The conviction and sentence passed by the Sessions Court, Kottayam, is pending before the Division Bench in appeal. Similarly, the inadequacy of the sentence of the trial court also is under challenge by the prosecution, and such an appeal also is pending along with the appeal filed by the convicted accused.

2. Accused 3 and 4, the petitioners herein, had by then been arrested, by the prosecution. They are now re-arrayed as accused 1 and 2, in S.C.No.120/2006, on the file of the Additional Sessions Court, (Ad hoc), Kottayam. They are before this Court for bail.

3. I have heard the arguments advanced by both sides. The learned Director General of Prosecution opposes the granting of bail to the petitioners, on the grounds, inter alia, that the petitioners were absconding for long, and if the bail is granted, their presence may not be able to be procured. It is also further submitted that the trial could be expedited, and if they are released, they would influence the witnesses and the same would affect the result of the prosecution case, which became a sensation in itself, because of the way in which the murder was committed, as also the involvement of senior police officer who had now been convicted on trial.

4. The learned counsel appearing for the petitioners, on the other hand, submitted that the Special Public Prosecutor who had been appointed on two occasions had relinquished their engagements, and it would take further time to appoint a fresh Prosecutor. It is also submitted by the counsel that because of the

pendency of the appeal before the Division Bench, records are not available before the trial court, and, thus, there would be indefinite incarceration of the petitioners, without a trial and sentence.

5. The learned Director General of Prosecution, however, replied that a representation had already been moved before the Division Bench, for sending the records back to the trial court, and the trial would be expedited, immediately on receipt of the records. It is also submitted that even if the Special Public Prosecutor is not appointed, the existing Prosecutor shall continue with the trial and instructions to that effect had already been given.

6. I have cautiously gone through the materials that are placed before me by either side. I fully agree with the submissions of the prosecution that the accused, petitioners herein, had been absconding, in a brutally murdered case, as had been pointed out by the prosecution, particularly, when other two accused had already been convicted. I also agree with the submission of the prosecution that if the petitioners are released on bail, possibility of their absconding cannot be ruled out. Nevertheless, they cannot be kept indefinitely in jail, without they facing the trial. Therefore, I direct the Director General of Prosecution to move immediately the Division

Bench, so that, the records of the lower court in respect of the original trial of Sessions Case relating to accused 1 and 2 of Crime No.110/2005 of Ettumannoor Police Station will be available before the trial court, which could continue with the trial of the Sessions Case, S.C.No.120/2006, re-filed against these petitioners, accused 1 and 2. This should be done, in any case, within 10 days from today.

7. The prosecution will not wait for the appointment of the Special Public Prosecutor, as is being submitted by the counsel for the petitioners. If the Special Public Prosecutor is not appointed within the above period of 10 days period, any one of the existing Public Prosecutors shall be directed to start with the trial, immediately on receipt of the records from the Division Bench, and with the permission of the Division Bench, as the appeal from the same case is pending before that Court.

Subject to the above directions, this application is dismissed.

J.M. JAMES,
JUDGE

nj.